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October 3, 1955

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CONCORD, N.H.

Mr. John O. Morton, Deputy Commissioner
Department of Public Works and Highways
State House Annex
Concord, New Hampshire

Dear Mr. Morton:

I have Mr. Keyser's letter of September 21 and your reply to him of September 28, 1955 and I am sorry to say that a thorough search here has failed to find the previous letter which Mr. Keyser addressed to you and which your records indicate was forwarded to me early this month.

You have indicated that Mr. Keyser requested for the selection of the Town of Strafford some indication of authority of the state to regulate water lines and other utilities within the limit of public highways.

It is my understanding that this road in question was laid out to a width of three rods in 1855 and that the water line in question was established in 1921. It is assumed that this water line was therefore established in accordance with the then law of New Hampshire, Public Statutes, chapter 82, which is now substantially the same in our present Revised Laws, chapter 90, part 25, as inserted by chapter 188, Laws of 1945. In the case of American Loan and Trust Co. v. General Electric Company, 71 N.H. 192, 200, the statutes providing a method whereby utilities may locate their routes within public highways "were designed to regulate and control the use made of highways for such purposes so that such use will not unduly interfere with the other public use for which the highways are dedicated. A license under these provisions is not a grant of franchise, but a mere permission to use highways, subject to limitations and constant control and regulation by public officers."

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It is my understanding that this highway is now under the jurisdiction of the Commissioner of Public Works and Highways.

The grant of permission to erect poles in streets and highways and, in my opinion, the right to similarly place conduits and pipe lines in public highways is made, either expressly or by implication, subject to the requirements of the public safety in the use of the streets. Twardosky v. New England Telephone and Telegraph Company, 95 N. H. 279, 230.

If the paramount purpose for which highways are laid out requires the removal of the pole or pipe line from the limits of the right of way or to another point within the right of way the license previously enjoyed by the utility is terminated and the utility has no such property right as to require compensation.

I am sending an extra copy of this letter for your convenience so that you can send it to Mr. Keyser to advise him of my opinion if you think that is advisable or necessary.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFM:L

Encl.